

Before the  
Administrative Hearing Commission  
State of Missouri



DIRECTOR OF DEPARTMENT OF  
INSURANCE, FINANCIAL  
INSTITUTIONS AND PROFESSIONAL  
REGISTRATION,

Petitioner,

vs.

KEVIN W. LOUDERBACK &  
PREMIER FINANCIAL SERVICES,

Respondents.

No. 07-1376 DI

**DECISION**

There is cause to discipline Kevin W. Louderback and Premier Financial Services ("Premier").

**Procedure**

On August 10, 2007, the Director of the Department of Insurance, Financial Institutions and Professional Registration ("the Director") filed a complaint to establish cause to discipline Louderback as a licensed insurance producer and Premier as a licensed business entity insurance producer. On August 20, 2007, we served our notice of complaint/notice of hearing and a copy of the complaint on Louderback and Premier by certified mail. On September 21, 2007, Louderback filed an answer and motion to dismiss on behalf of himself and Premier. On

November 15, 2007, we denied the motion to dismiss. On February 26, 2009, we granted the Director leave to file his first amended complaint as of February 17, 2009. We held a hearing on March 30, 2009. Elfin L. Noce represented the Director. Neither Louderback nor any representative for Respondents appeared. The Director filed a written argument on April 28, 2009.

### **Findings of Fact**

1. On December 1, 2004, the Director licensed Louderback as an insurance producer. The license expired on December 2, 2008, and was not renewed.
2. On December 30, 2004, the Director licensed Premier as a business entity insurance producer. The license expired on December 31, 2008, and was not renewed.
3. Louderback owned Premier.
4. On January 2, 1999, in the Circuit Court of Barry County, the prosecuting attorney filed a complaint, charging:

that the defendant [Louderback], in violation of Section 570.120, RSMo, committed the class D felony of passing bad checks . . . in that on or about 11/06/1998 in the County of Barry, State of Missouri, the defendant, with purpose to defraud, issued a check, numbered 1057, in the amount of \$300.65, drawn upon an account with the CENTRAL BANK/LEBANON, MO, dated 11/06/1998, payable to MIDWEST PAGING, INC, knowing that it would not be paid.<sup>[1]</sup>

5. On August 14, 2000, the court found Louderback guilty upon his plea of guilty to the amended charge of passing a bad check under \$150. The court fined Louderback \$10.
6. On February 13, 2002, McLeod USA, a communications company, reported to the Springfield Police Department that Louderback, while an employee of McLeod USA, had

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<sup>1</sup>Ex. 6.

purchased nearly \$4,000 in computer accessories and office products for his own use and personal gain and billed them to McLeod USA without authorization.

7. On November 5, 2003, the prosecuting attorney filed an information in the Circuit Court of Greene County charging:

that the defendant [Louderback], in violation of Section 570.030, RSMo, committed the class C felony of stealing . . . in that on or about the 15<sup>th</sup> day of August, 2001, in the County of Greene, State of Missouri, the defendant, KEVIN WAYNE LOUDERBACK, appropriated computer equipment of a value of at least seven hundred fifty dollars, which said property was in the possession of McLeod [sic] USA, and defendant appropriated such property without the consent of McLeod [sic] USA and with the purpose to deprive it thereof.<sup>[2]</sup>

8. On June 16, 2004, Louderback pled guilty and the court found him guilty of the charge in the information. The court sentenced Louderback to four years' imprisonment, suspended the execution of sentence, and placed Louderback on probation for five years pursuant to a plea agreement in which Louderback promised to pay restitution.

9. On November 10, 2004, Louderback signed an application for an insurance producer license ("Louderback application") and submitted it to the Department, which received it on November 15, 2004.

10. In the Louderback application under Section 39, "Background Information," Question 1 asks:

Have you ever been convicted of, or are you currently charged with, committing a crime, whether or not adjudication was withheld?

"Crime" includes a misdemeanor, felony or military offense. You may exclude misdemeanor traffic citations and juvenile offenses. "Convicted" includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty

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<sup>2</sup>Ex. 7.

or nolo contendere [sic], or having been given probation, a suspended sentence or a fine.<sup>3]</sup>

Respondent Louderback answered this question “No.”

11. Louderback signed the following certification on the Louderback application:

1. I hereby certify that, under penalty of perjury, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.<sup>4]</sup>

12. Based on the information provided in the Louderback application, the Director granted Louderback an insurance producer license on December 1, 2004.

13. On December 13, 2004, Louderback signed an application for a business entity insurance producer license for Premier (“Premier application”), and submitted it to the Department, which received it on December 22, 2004.

14. Section 26 of the Premier application requests: “Identify all owners with 10% interest or voting interest, partners, officers and directors of the business entity[.]” Louderback listed only himself and listed his title as “Owner.”<sup>5</sup>

15. In the Premier application under section 29, “Background Information,” Question 1 asks:

Has the business entity or any owner, partner, officer or director ever been convicted of, or is the business entity or any owner, partner, officer or director currently charged with, committing a crime, whether or not adjudication was withheld?

“Crime” includes a misdemeanor, felony or military offense. You may exclude misdemeanor traffic citations and juvenile offenses. “Convicted” includes, but is not limited to, having been found

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<sup>3</sup>Ex. 3 at 3.

<sup>4</sup>*Id.* at 4.

<sup>5</sup>Ex. 4 at 1.

guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere [sic], or having been given probation, a suspended sentence or a fine.<sup>6]</sup>

Louderback answered this question “No” on behalf of Premier.

16. In the Premier application under “Applicants [sic] Certification and Attestation,” section 30 states:

The undersigned owner, partner, officer or director of the business entity hereby certifies, under penalty of perjury, that:

1. All of the information submitted in this application and attachments is true and complete and I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license or registration revocation and may subject me and the business entity to civil or criminal penalties.<sup>7]</sup>

17. The Premier application provides that the application “[m]ust be signed by an officer, director, principal or partner of the business entity.” Following this statement is the signature block, in which Louderback signed and listed his title as “owner.”<sup>8</sup>

18. Based on the information provided in the Premier application, the Director licensed Premier as a business entity producer.

19. When answering “no” to Question 1 under section 39 on the Louderback application and to Question 1 under section 29 on the Premier application, Louderback knew that he was answering the questions falsely. Louderback answered the questions falsely to prevent the Director from finding out about the convictions for passing bad checks and stealing and from considering them when deciding whether to grant or deny those applications.

20. On May 1, 2007, the Director's Special Investigator Diana Brady personally served Louderback a subpoena issued by the Director ordering Louderback to appear before the

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<sup>6</sup>Ex. 4 at 4.

<sup>7</sup>*Id.* at 5.

<sup>8</sup>*Id.*

Director on May 23, 2007, to answer questions about his transactions with organizations listed in the subpoena duces tecum and to bring documents identified on the attached Exhibit A.

21. Louderback failed to appear before the Director on May 23, 2007, and the conference was rescheduled to June 5, 2007. Louderback failed to appear before the Director on June 5, 2007.

22. A Missouri Attorney General's Office investigation led to the conclusion on February 23, 2007, that there was probable cause to believe that Louderback used the identity of his brother, including his social security number, without his brother's consent to obtain a credit account at GEMB/Walmart and internet accounts at Gateway and Dell Computers, Wells Fargo/Tiger Direct, in the amount of \$2,443.92.

23. On March 7, 2007, the Prosecuting Attorney of Greene County and the Missouri Attorney General filed a complaint in the Circuit Court of Greene County alleging that Louderback committed the felony of identity theft in regard to the events set forth in the probable cause statement. On July 25, 2007, Louderback appeared at a preliminary hearing in the Circuit Court of Greene County on the complaint.

24. Neither Louderback nor Premier reported to the Director Louderback's prosecution for identity theft within 30 days of July 25, 2007.

25. On August 2, 2007, the Prosecuting Attorney and the Attorney General filed an information in the Circuit Court of Greene County, charging:

that the defendant, in violation of Section 570.223, RSMo, committed the class C felony of identity theft . . . in that on or between the 1<sup>st</sup> day of July, 2004, and the 31<sup>st</sup> day of December, 2004, in the County of Greene, State of Missouri, the defendant Kevin Wayne Louderback, knowingly, with the intent to deceive or defraud, used a social security number, a means of identification, not lawfully issued for defendant's use and that

resulted in the theft of goods in excess of five hundred dollars and not exceeding ten thousand dollars in value.<sup>9]</sup>

26. After a bench trial on December 10, 2008, the court found, on December 22, 2008, that Louderback did knowingly and with the intent to deceive or defraud obtain, possess, transfer or use one or more means of identification not lawfully issued for his use in violation of § 570.223, RSMo. The court found that Louderback was guilty of the Class A misdemeanor of identity theft because the theft or appropriation of credit, money, goods, services, or other property did not exceed \$500 in value. The court found that Louderback pled guilty or was found guilty of two felonies prior to the date of the present offense and was therefore a persistent felony offender pursuant to § 558.016, RSMo.

27. On March 20, 2009, the court sentenced Louderback to one year in the Greene County jail for the conviction of identity theft.

### **Conclusions of Law**

We have jurisdiction of the original and amended complaints, even after the licenses have expired.<sup>10</sup> The Director has the burden to prove facts for which the law allows discipline.<sup>11</sup> The Director must prove his allegations by a preponderance of the evidence.<sup>12</sup>

Preponderance of the evidence is that which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows the fact to be proved to be more probable than not.<sup>13]</sup>

The Director contends that there is cause for discipline under the following provisions of § 375.141:

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<sup>9</sup>Ex. 7.

<sup>10</sup>Sections 621.045 and 375.141.4. Statutory references are to RSMo Supp. 2008, unless otherwise noted.

<sup>11</sup>*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

<sup>12</sup>*State Board of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App., W.D. 2000).

<sup>13</sup>*Id.*

1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

(1) Intentionally providing materially incorrect, misleading, incomplete or untrue information in the license application;

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

(3) Obtaining or attempting to obtain a license through material misrepresentation or fraud;

\* \* \*

(6) Having been convicted of a felony or crime involving moral turpitude;

\* \* \*

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]

Counts I and II (Louderback)  
Counts VI and VII (Premiere)

On the Louderback application, Louderback answered “No” to the question whether he had been convicted of or are currently charged with committing a crime, whether or not adjudication was withheld, even though on August 14, 2000, he pled guilty to a misdemeanor passing a bad check charge and on June 16, 2004, pled guilty to the Class C felony of stealing. “Material” means “having real importance or great consequences[.]”<sup>14</sup> There is no dispute that such information has “real importance” to the Director’s discretion on whether to issue an insurance producer license to Louderback. The issue is whether Louderback intentionally answered “No.”

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<sup>14</sup>MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 765 (11th ed. 2004).



“Intentionally” means to act by intention or design.<sup>15</sup> “Intention” means “a determination to act in a certain way.”<sup>16</sup> The issue as to § 375.141.1(3) is whether the “no” answers were “misrepresentations or fraud.” A misrepresentation is a falsehood or untruth made with the intent of deceit rather than inadvertent mistake.<sup>17</sup> To “deceive” is “to cause to accept as true or valid what is false or invalid.”<sup>18</sup> Fraud is an intentional perversion of truth to induce another to act in reliance upon it.<sup>19</sup> It requires the intent that others rely on the misrepresentation.<sup>20</sup> “Concealment of a material fact of a transaction, which a party has the duty to disclose, constitutes fraud as actual as by affirmative misrepresentation.”<sup>21</sup> That duty arises when the concealer is a fiduciary or has superior knowledge.<sup>22</sup> We may infer fraudulent intent from the circumstances of the case.<sup>23</sup>

Normally a person would not forget that he had two convictions. This is especially true in Louderback's case because his most recent conviction was for a felony upon which sentence had been imposed and probation granted only five months before signing the Louderback application. While Louderback filed an answer to the original complaint in which he tried to explain why he did not answer “yes,” he failed to appear and present evidence to support his contentions.<sup>24</sup> We cannot base our findings of fact on his unsworn statements, only on evidence

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<sup>15</sup>MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY at 651.

<sup>16</sup>*Id.*

<sup>17</sup>*Hernandez v. State Bd. of Regis'n for Healing Arts*, 936 S.W.2d 894, 899 n.3 (Mo. App., W.D. 1997)

<sup>18</sup>MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 321 (11<sup>th</sup> ed. 2004).

<sup>19</sup>*Hernandez v. State Bd. of Regis'n for Healing Arts*, 936 S.W.2d at 899 n.2.

<sup>20</sup>*Sofka v. Thal*, 662 S.W.2d 502, 506 (Mo. banc 1983); *see also Missouri Dental Board v. Bailey*, 731 S.W.2d 272, 274-75 (Mo. App., W.D. 1987).

<sup>21</sup>*Daffin v. Daffin*, 567 S.W.2d 672, 677 (Mo. App., K.C.D. 1978).

<sup>22</sup>*Nigro v. Research College of Nursing*, 876 S.W.2d 681, 686 (Mo. App., W.D. 1994).

<sup>23</sup>*Essex v. Getty Oil Co.*, 661 S.W.2d 544, 551 (Mo. App., W.D. 1983).

<sup>24</sup>Louderback claimed that he entered a plea of nolo contendere rather than a plea of guilty to the stealing charge. Missouri law does not now and has never provided for a plea of nolo contendere in criminal proceedings. Supreme Court Rule 24.02(a) (“A defendant may plead not guilty, guilty, or not guilty by reason of mental disease or defect excluding responsibility, or both not guilty and not guilty by reason of mental disease or defect excluding responsibility.”) and *State v. Vizcaino-Roque*, 800 S.W.2d 22 (Mo. App., W.D. 1990). Even when someone has entered such a plea in another state, it is considered “‘an implied confession of guilty and for the purposes of the prosecution is equivalent to a plea of guilty.’ . . . After such a plea nothing is left but to render judgment as the plea, where recognized, is as conclusive as a plea of guilty.” *Id.* at 23.

taken at the hearing. The only party who presented evidence was the Director. The preponderance of the evidence supports our finding that Louderback knew that he answered the questions about crimes and convictions incorrectly and did so to deprive the Director of information important for the Director's decision on whether to grant the applications of Louderback and Premier. Therefore, we find cause to discipline Louderback under § 375.141.1(1) and (3).

Premier answered “No” to the question “Has the business entity or any owner, partner, officer or director ever been convicted of, or is the business entity or any owner, partner, officer or director currently charged with, committing a crime, whether or not adjudication was withheld” on its application even though its owner, Louderback, had two convictions, the last one only six months before the application was completed and signed. Louderback is the owner of Premier. His conduct is Premier’s conduct. Louderback completed, signed, and submitted the Premier application to obtain a license for Premier. Therefore, for the same reasons set forth above regarding the Louderback application, we find cause to discipline Premier for its application under § 375.141.1(1) and (3).

### Count III (Louderback)

Louderback attended a preliminary hearing on July 25, 2007, for a felony charge of identity theft. Section 570.223<sup>25</sup> sets forth the elements for identity theft:

1. A person commits the crime of identity theft if he or she knowingly and with the intent to deceive or defraud obtains, possesses, transfers, uses, or attempts to obtain, transfer or use, one or more means of identification not lawfully issued for his or her use.

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3. A person found guilty of identity theft shall be punished as follows:

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<sup>25</sup>RSMo Supp. 2004.

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(3) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding five hundred dollars and not exceeding ten thousand dollars in value is a class C felony[.]

Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything “done contrary to justice, honesty, modesty, and good morals.”<sup>[26]</sup>

In a recent case, *Brehe v. Missouri Dep’t of Elementary and Secondary Education*,<sup>27</sup> which involved an attempt to discipline a teacher’s certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three categories of crimes:

Those classifications are (1) crimes that necessarily involve moral turpitude, such as frauds; (2) crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking; and (3) crimes that “may be saturated with moral turpitude,” yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee.<sup>[28]</sup>

We adopt this framework to determine what crimes involve moral turpitude. Identity theft, both as defined by statute and as charged in the information, involves fraudulent intent. It is a Category 1 offense and therefore involves moral turpitude, as well as being a felony.

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<sup>26</sup>*In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

<sup>27</sup>213 S.W.3d 720 (Mo. App., W.D. 2007). While we realize that the *Brehe* court made its decision based on the teacher discipline statute that mandated discipline in some cases and made it discretionary in others, we find the analysis compelling. If every crime is a crime involving moral turpitude, the “moral turpitude” language is superfluous. The distinction that the court made between the types of crimes gives us guidance and finds support in other courts’ decisions.

<sup>28</sup>*Id.* at 725 (quoting *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9<sup>th</sup> Cir. 1954)).

Section 375.141.7 is an insurance law of this state and placed the duty upon Louderback, as a producer, to report to the Director his prosecution for identity theft:

Within thirty days of the initial pretrial hearing date, a producer shall report to the director any criminal prosecution for a felony or a crime involving moral turpitude of the producer taken in any jurisdiction. The report shall include a copy of the indictment or information filed, the order resulting from the hearing and any other relevant legal documents.

The Director's evidence shows that Louderback failed to comply with this provision. Although Louderback alleges reasons for not doing so in his answer to the original complaint, he failed to appear and present evidence to prove those reasons at the hearing. We have only the Director's evidence to rely on. Therefore, we find cause to discipline Louderback under § 375.141.1(2).

#### Count IV (Louderback)

The Director contends that Louderback violated the provision in § 374.210.2 that provides: "The director may also suspend, revoke or refuse any license or certificate of authority issued by the director to any person who does not appear or refuses to testify, file a statement, produce records, or does not obey a subpoena."

Louderback received a subpoena duces tecum from the Director to appear on a specified date concerning certain matters identified in the subpoena and directing Louderback to bring certain documents. When Louderback did not appear, the Director reset the meeting for a different date, but Louderback again did not appear. Louderback alleges reasons for his non-appearance in his answer to the original complaint, but failed to present evidence of such at the hearing. We find the Director's evidence sufficient to show that Louderback's violation of § 375.210.2 is cause for discipline.

Count V (Louderback)

Section 570.030<sup>29</sup> provides:

1. A person commits the crime of stealing if he or she appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion.

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3. Stealing is a class C felony if:

(1) The value of the property or services appropriated is seven hundred fifty dollars or more[.]

We have already explained why identity theft is a crime of moral turpitude. The same reasons apply to support the conclusion that Louderback's conviction for stealing is for a crime of moral turpitude.

One of Louderback's convictions was for a felony; two were for crimes of moral turpitude. There is cause for discipline under § 375.141.1(6).

Count VIII (Premier)

The Director contends there is cause to discipline Premier under § 375.141.3, which provides:

The license of a business entity licensed as an insurance producer may be suspended, revoked, renewal refused or an application may be refused if the director finds that a violation by an individual insurance producer was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the director nor corrective action taken.

We found that Louderback's conduct in Counts I to V constitutes cause for discipline. The Director contends that Premier neither reported any of Louderback's conduct set forth in Count I to V nor took any corrective action. The Director's investigator testified that Premier never

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<sup>29</sup>RSMo 2000.

reported this conduct, but there was no testimony that Premier never took corrective action. Nevertheless, since Louderback was the sole owner of Premier and there is no evidence of anyone else being involved in the management of Premier, it is a fair inference that Louderback took no corrective action against himself. Louderback did not appear at the hearing to present any evidence contrary to this inference. Therefore, we find cause to discipline Premier under § 375.141.3.

Count IX (Louderback)

The Director contends:

Respondent Louderback failed to disclose his criminal history on his insurance producer license application and on Respondent Premier Financial Services' business entity insurance producer license application, was convicted of Felony Stealing, and was convicted of Misdemeanor [sic] Identity Theft. . . . These actions by Respondent Louderback demonstrate fraudulent and dishonest practices, which is cause to discipline Respondent Louderback's insurance producer license under § 375.141.1(8), RSMo (Supp. 2008).[<sup>30</sup>]

To establish cause to discipline Louderback under § 375.141.1(8), the licensee's conduct must have occurred "in the conduct of business." While § 375.141.1(1) and (3) allow discipline for lying on a licensure application, subdivision (8) does not.

This provision [§ 375.141.1(8)] does not provide cause for denial because Huddlestonsmith was not engaged in "the conduct of business" when he applied for the insurance producer license. He could not engage in that business until after he obtained the license.[<sup>31</sup>]

As for the stealing and identity theft convictions, we have no evidence to show in what context Louderback committed these crimes. The stealing conviction pre-dated his licensure from the Director, and there is no evidence to show that he committed stealing while conducting

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<sup>30</sup>Pet. brief at 9.

<sup>31</sup>*Huddlestonsmith v. Director of Insurance*, No. 06-0161 DI (Nov. 13, 2006).

some other business. While the conduct leading to the identity theft conviction occurred after his licensure, the Director has not presented any evidence from which we can conclude that he committed the conduct in the course of any business – insurance or otherwise. We find no cause to discipline Louderback under § 375.141.1(8).

Count X (Premier)

In Count X of the amended complaint, the Director contends:

41. Respondent Premier Financial Services['] actions specified in Count VI through Count VIII were fraudulent and dishonest practices, a ground for discipline under § 375.141.1(8), RSMo (Supp. 2008).

Premier's actions in Counts VI and VII involved the Premier application. For the same reasons as we set forth regarding Louderback's conduct on his application, Premier's actions were not "in the conduct of business" and therefore are not cause for discipline under § 375.141.1(8).

Similarly, the duty to report established in § 375.141.3 is not a requirement to do something in the conduct of a business entity's insurance business, but is a requirement to assist the Director in the enforcement of insurance laws. Accordingly, we find no cause to discipline Premier under § 375.141.1(8) for the conduct set forth in Counts VI to VIII.

In its written argument, the Director also contends:

Respondent Premier Financial Services' failure to disclose Respondent Louderback's criminal history on its business entity insurance producer application or failure to report Respondent Louderback's failure to report his Identity Theft prosecution to the director. . . . These actions demonstrate fraudulent and dishonest practices, which is cause to discipline Respondent Premier Financial Services' business entity insurance producer license under § 375.141.7, RSMo (Supp. 2008).<sup>[32]</sup>

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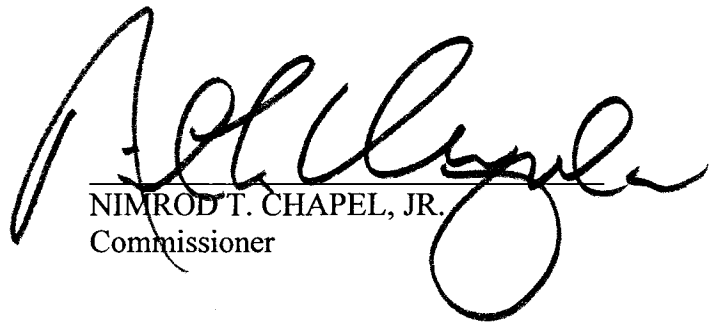
<sup>32</sup>Pet. brief at 9. A violation of § 375.141.7 is cause for discipline only by way of § 375.141.1(2), which authorizes discipline for "[v]iolating any insurance laws."

The amended complaint does not contend that Premier's conduct violates § 375.141.7. Our Regulation 1 CSR 15-3.350(2)(A)3 and 4 require that a licensing agency's complaint set forth specifically the facts and law that authorize discipline. Due process also requires such pleading.<sup>33</sup> We cannot find discipline on matters not charged.<sup>34</sup> Therefore, we find no cause to discipline Premier on the basis of any violation of § 375.141.7.

### Summary

There is cause to discipline Louderback under § 375.141.1(1), (2), (3) and (6). There is cause to discipline Premier under § 375.141.1(1) and (3).

SO ORDERED on May 21, 2009.



NIMROD T. CHAPEL, JR.  
Commissioner

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<sup>33</sup>*Duncan v. Missouri Bd. for Arch'ts, Prof'l Eng'rs & Land Surv'rs*, 744 S.W.2d 524, 538-39 (Mo. App., E.D. 1988), and *Sander v. Missouri Real Estate Comm'n*, 710 S.W.2d 896, 901 (Mo. App., E.D. 1986).

<sup>34</sup>*Missouri Dental Bd. v. Cohen*, 867 S.W.2d 295 (Mo. App., W.D. 1993).